

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEWIS LIPNICK and LYNN-JANE  
FOREMAN LIPNICK,

Plaintiffs,

v.

UNITED AIR LINES, INC. and  
DEUTSCHE LUFTHANSA  
AKTIENGESELLSCHAFT,

Defendants.

No. C 11-2028 CW

ORDER GRANTING  
MOTION TO TRANSFER  
CASE TO THE  
EASTERN DISTRICT  
OF VIRGINIA

INTRODUCTION

Defendants United Air Lines, Inc. and Deutsche Lufthansa Aktiengesellschaft move to transfer this action to the Eastern District of Virginia or, alternatively, to the District of Columbia. Plaintiffs oppose the motion. Having considered the papers submitted by the parties, the Court finds it in the interest of justice to GRANT Defendants' motion to transfer the action to the Eastern District of Virginia.

BACKGROUND

Plaintiff Lewis Lipnick filed his initial action in the Superior Court of California. He asserted claims under the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) and alleged negligence against Defendants for injuries he sustained in Munich, Germany, while embarking on United Air Lines Flight 903 destined for Dulles International Airport in Chantilly, Virginia. Defendants removed the case to district court on the basis of diversity and federal

1 question jurisdiction. Plaintiff Lewis Lipnick's wife, Lynn-Jane  
2 Foreman Lipnick, joined the action in the First Amended Complaint,  
3 alleging damages for loss of consortium. Plaintiffs are residents  
4 of Falls Church, Virginia. Defendants now move under 28 U.S.C.  
5 § 1404(a) to transfer the case.

6 LEGAL STANDARD

7 "For the convenience of parties and witnesses, in the  
8 interest of justice, a district court may transfer any civil  
9 action to any other district or division where it might have been  
10 brought." 28 U.S.C. § 1404(a). Section 1404(a) accords a  
11 district court broad discretion with respect to transferring a  
12 case. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 31 (1988)  
13 (citing Norwood v. Kirkpatrick, 349 U.S. 29, 32 (1955)). In  
14 assessing whether to exercise its discretion to do so, a district  
15 court considers the following: (1) convenience of the parties;  
16 (2) convenience of the witnesses; and (3) the interest of justice.  
17 Id. The Ninth Circuit has identified numerous additional factors  
18 a court may consider in determining whether a change of venue  
19 should be granted pursuant to § 1404(a):

20 (1) the location where the relevant agreements were  
21 negotiated and executed, (2) the state that is most  
22 familiar with the governing law, (3) the plaintiff's  
23 choice of forum, (4) the respective parties' contacts  
24 with the forum, (5) the contacts relating to the  
25 plaintiff's cause of action in the chosen forum, (6) the  
26 differences in the costs of litigation in the two  
27 forums, (7) the availability of compulsory process to  
28 compel attendance of unwilling non-party witnesses, and  
(8) the ease of access to sources of proof.

Jones v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir.  
2000).

1 The burden is on the defendant to show that the convenience  
2 of parties and witnesses and the interests of justice require  
3 transfer to another district. Commodity Futures Trading Comm'n v.  
4 Savage, 611 F.2d 270, 279 (9th Cir. 1979). The Supreme Court has  
5 ruled that a Section 1404(a) analysis should be an  
6 "individualized, case-by-case consideration of convenience and  
7 fairness." Van Dusen v. Barrack, 376 U.S. 612, 622 (1964).

#### 8 DISCUSSION

9 Defendants have met their burden to show that the relevant  
10 factors weigh in favor of transferring this case to the Eastern  
11 District of Virginia.

12 The convenience of the parties does not merit much  
13 consideration here. Plaintiffs have chosen to sue in California,  
14 and Defendants are corporations with extensive operations in each  
15 forum.

16 The convenience of the witnesses, however, weighs heavily in  
17 favor of transfer. Courts in this district have called "the  
18 convenience of witnesses often the most important factor in  
19 deciding whether to transfer an action." Getz v. Boeing Co., 547  
20 F. Supp. 2d 1080, 1083 (N.D. Cal. 2008); see also Kina v. United  
21 Air Lines, Inc., 2008 WL 5071045, at \*6 (N.D. Cal.). All of  
22 Plaintiffs' identified witnesses reside in and around the Eastern  
23 District of Virginia, and all but one member of the flight crew on  
24 United Air Lines Flight 903 are domiciled in the Eastern District  
25 of Virginia.

26 The interest of justice relates to the use of judicial  
27 resources, delay to the parties and the interests of the local  
28 court. See Pratt v. Rowland, 769 F. Supp. 1128, 1133 (N.D. Cal.

1 1991). Transferring the case to the Eastern District of Virginia,  
2 where cases are resolved more quickly than in the Northern  
3 District of California, will reduce delay to the parties. Because  
4 Plaintiffs are Virginia residents, a Virginia court has a greater  
5 interest in resolving this dispute than a California court does.  
6 Moreover, it is consistent with the interest of justice to  
7 transfer a case when the litigation has not progressed very far,  
8 as is the case here. See Unisys Corp. v. Access Co., Ltd., 2005  
9 WL 3157457, at \*6 (N.D. Cal.).

10 The additional Ninth Circuit considerations also favor  
11 transfer.

12 There is no evidence that one forum is more, or less,  
13 familiar with the Montreal Convention; and California law does not  
14 apply to this case except in a choice-of-law analysis. See Piper  
15 Aircraft Co. v. Reyno, 454 U.S. 235, 244 n.8 (1981). Although  
16 Plaintiffs cite Kruger v. United Air Lines, Inc., 481 F. Supp. 2d  
17 1005 (N.D. Cal. 2007), to support the contention that substantive  
18 California law should apply here, it only applied in Kruger  
19 because the incident giving rise to that cause of action occurred  
20 during a flight between San Francisco, California, and Seattle,  
21 Washington.

22 The plaintiffs' choice of forum, which is normally accorded  
23 significant weight, is diminished in importance where the chosen  
24 venue neither is the plaintiffs' residence nor has a significant  
25 connection to the activities alleged. Pacific Car & Foundry Co.  
26 v. Pence, 403 F.2d 949, 954 (9th Cir. 1968). The parties'  
27 contacts with the respective forums, both generally and in  
28 connection with the cause of action, are more closely tied to

1 Virginia than to California. Plaintiffs are residents of  
2 Virginia, and the operative facts occurred while one of them  
3 embarked on a flight from Munich, Germany to Chantilly, Virginia.

4 The availability of compulsory process to compel the  
5 attendance of unwilling witnesses favors moving the case to the  
6 Eastern District of Virginia. With rare exception, the Court's  
7 subpoena power only extends outside of its district if the place  
8 of service is "within 100 miles of the place specified for the  
9 depositions, hearing, trial, production or inspection." Fed. R.  
10 Civ. P. 45(b) (2) (B). All identified witnesses lie outside of this  
11 Court's reach but within the subpoena power of the Eastern  
12 District of Virginia.

13 While ease of access to documentary information may be the  
14 same between the two forums, moving the case to the Eastern  
15 District of Virginia allows for easier access to witness  
16 testimony.

17 CONCLUSION

18 For the foregoing reasons, Defendants' motion to transfer the  
19 case to the Eastern District of Virginia is GRANTED.

20 IT IS SO ORDERED.

21  
22 Dated: **9/9/2011**

23   
24 CLAUDIA WILKEN  
25 United States District Judge  
26  
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